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IN THE

Supreme Court of the United States

October Term, 1952
No. 404

WARNER D. ORVIS, HOMER W. ORVIS, FLOYD Y. KEELER, F. HOWARD SMITH, HAROLD A. ROUSSELOT, HENRY H. BALFOUR, J. ANTONIO ZALDUONDO, WILLIAM G. WIGTON, CLIFFORD J. DOERLE, and HERBERT J. JOHNSON, doing business under the firm name and style of ORVIS BROTHERS & Co., and JOHN J. MCCLOSKEY, JR., as City Sheriff of the City of New York,

Petitioners,

against

JAMES P. MCGRANERY, Attorney General of the United States, as Successor to the Alien Property Custodian,

Respondent.

PETITIONERS' REPLY BRIEF

DONALD MARKS,
Counsel for Petitioners.

SUPREME PRINTING CO., INC., 41 MURRAY STREET, N. Y., BARCLAY 7-0349

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Two of the points in Respondent's brief require attention.

In Point 3 (p. 14), Respondent attempts to minimize the importance of the case by reference to facts dehors the record. Petitioners are, of course, in no position to challenge these statements. But it may be noted that the statistics deal only with claims already filed in the Office of Alien Property and not with the claims that may be filed on unlicensed attachments in the future. The Sheriff of the County of New York has now in his office 25 post-freezing, unlicensed attachments upon blocked property, aggregating $15,672,979.23 in amount. No one can say

how many such attachments exist in the country as a whole, or the total money involved. It is obvious that the decision in this case may have a much broader impact than is indicated in the figures given by Respondent.

Even the thirteen claims and $328,500 in money disclosed by Respondent are not *de minimis*. The issue in this case has in any event sufficient importance to warrant the issuance of a writ.

2. In Point 2 of Respondent's brief (pp. 8-13), the argument is made that Executive Order No. 8389, as amplified by General Ruling No. 12, prohibited a valid attachment lien "as against the Government" unless licensed by the Treasury; and that this view is essential to the objectives of the freezing controls.

Both the premise and the conclusion are erroneous.

In the first *Zittman* case, this Court gave extended consideration to this very argument (341 U. S. at 452-459). The Court quoted at length from a brief filed by the Departments of Justice and Treasury with the New York Court of Appeals in *Commission for Polish Relief* v. *Banca Nationala a Rumaniei*, 288 N. Y. 332 (1942) citing, among other things, the following statements which are quite irreconcilable with the position now taken by the Department of Justice:

> "'So far as foreign funds control is concerned there can be an attachable interest under New York law with respect to the blocked assets'" (341 U. S. at 455).
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> "'Under this analysis of what the nature of any attachment action against a blocked account must be, in the light of the purposes of a freezing control, it is suggested that an attachment action of this nature might well be allowed in the New York courts'" (341 U. S. at 456).

Indeed, in the first *Zittman* case, this Court noted a stipulation "that consistent administrative practice treated attachments such as we have here as permissible and valid at the time they were levied" (341 U. S. at 458).

The conclusion of Respondents argument that a valid unlicensed attachment would be inconsistent with the purpose of the freezing program was also rejected by this Court in the first *Zittman* case. This contention was answered as follows:

> "We agree with the Government's assurance to the Court of Appeals in the Polish Relief case that these proceedings, in view of the fact that they do not purport to control the Custodian in the exercise of the federal licensing power, or in the power to vest the *res* if he sees fit to do so for administration, are not inconsistent with the freezing program and we think they were not invalidated or considered in Propper v. Clark, *supra*" (341 U. S. at 463).

Respondent's suggestion that the blocked funds will inure to the benefit of the United States Government if the decision below is allowed to stand is wholly without merit. Appendix 4 (Resp. Br. p. 31) shows that Petitioners, as general claimants, will receive something under 20% of their claim. The only parties benefited by the Government's successful opposition in this case are other general claimants. It is sheer nonsense to argue that by the enactment of Section 34 Congress intended that attachment liens should be invalidated in the interest of "equitable" distribution, when Section 34(i) expressly recognizes the continued efficacy of Section 9 as a procedural remedy. These arguments were all presented by the Government and rejected by this Court in the *Zittman* cases.

It follows, therefore, that Respondent's grounds for opposition to the writ have already been found untenable by this Court.

Conclusion

Respondent concedes that this case presents the particular issue left open by this Court in the *Zittman* cases. The only arguments in Respondent's brief in support of the decision below were rejected by this Court in the first *Zittman* case. The attempt to minimize the importance of the issue should not carry weight in determining whether the writ shall issue, as it is predicated upon information outside the record and because such information is misleading as to the potential importance of the case.

Respectfully submitted,

DONALD MARKS,
Counsel for Petitioners.